

Remarks:

Claims 1-3, and 5-20 are pending in the present application. Claims 1-20 were rejected. Claims 1 and 12 have been amended and claim 4 has been canceled. Applicant respectfully requests entrance of this amendment on the present application. The Applicant respectfully submits that the present claims are in condition for allowance and respectfully requests an early notice of Allowance or other favorable action. Please charge any prosecution fees which are due to Kimberly-Clark Corporation's Deposit Account No. 11-0875.

35 USC §112 Rejections

Claim 4 was rejected under 35 USC §112, 2nd Paragraph, as being indefinite for failing to point out particularly the subject matter regarded as the invention. Specifically, the Examiner noted that claim 4 contains the trademark/trade name CATALLOY. Claim 4 has been canceled.

35 USC §103 Rejections

Claims 1-3, 5-20 were rejected under 35 USC §103(a) as being unpatentable over Kobylivker et al (US 6,002,064) in view of Yahiaoui et al (US 6,107,268). Regarding claims 1, 6-10, and 12, the Examiner states that:

Kobylivker et al discloses a method of forming stretch-thinned breathable films. The method includes providing a multilayer polymer film with skin layers, heating the film to an elevated temperature for stretching, uniaxially stretching the film 3-4 times, i.e. 300% to 400% of its original length, and thermal bonding the film to a non-woven web. (Col 7, line 31 to Col 8, line 58)

An important distinction that the Examiner noted is that "Kobylivker et al does not disclose applying a surfactant to a non-woven web and bonding the film to the surfactant treated web."

However, the Examiner did go on to posit that

. . . coating the non-woven web with a surfactant prior to bonding the web is well known and conventional as shown for example by Yahiaoui et al. Yahiaoui et al discloses method of forming a sorbent material. The method includes applying a wetting chemistry, i.e. a surfactant, to the non-woven to improve absorbency characteristic for multilayer laminates prior to bonding. (Cal 3, lines 30-66 and Col 7, line 62 to Cal 8, line 19)

The Examiner then concludes that:

It would have been obvious to one skilled in the art at the time the invention was made to provide a coating of surfactant onto the non-woven web as disclosed by Yahiaoui et al in the method of Kobylivker et al to provide an improved absorbency characteristic to allow faster absorption of liquids.

The Applicant respectfully traverses this rejection.

It is well established in the field of patent law that the Examiner bears the burden of establishing a prima facie case of obviousness. The Examiner can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.

Prior to any combination of references, it must first be determined whether the combination is proper by determining whether the references are even drawn to analogous art. Two criteria have evolved for determining whether prior art is analogous: (1) whether the art is from the same field of endeavor, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. A reference is considered reasonably pertinent if it is one which, because of the matter with which it deals, logically would have commended itself to the inventor's attention in considering his problem. If a reference disclosure has the same purpose

as the claimed invention, the reference relates to the same problem, if it is directed to a different purpose, the inventor would accordingly have had less motivation or occasion to consider it.

The Applicant maintains that the two patents are nonanalogous in that Kobylivker is concerned with the creation of a nonwoven web bonded to a film that is resistant to liquid and virus penetration. On the other hand, Yahiaoui is directed to a web having a wetting chemistry distributed substantially throughout the entire substrate.

Moreover, as noted by the Examiner, in one aspect, Kobylivker is concerned with the creation of a nonwoven web bonded to a film. The film is breathable and may be provided with such breathability by, among other methods, the use of a filled film. Yahiaoui et al, pertains to the use of sorbent materials that may include the application of surfactants to enhance and/or create the absorbent properties of the material. However, the Applicant can find no reference in Kobylivker et al that would suggest the use of a surfactant treated nonwoven web, let alone teach the same. In fact, the Examiner also noted that "Kobylivker et al does not disclose applying a surfactant to a non-woven web." Similarly, Applicant can find no reference to the use of a film in Yahiaoui et al., let alone a stretched breathable film resistant to penetration by liquids and viral agents as disclosed in Kobylivker et al.

These references cannot properly be combined because they are directed to entirely different fields of endeavor. Neither reference is remotely pertinent to the other and it would not have been logical for the inventor to consider a combination of Kobylivker et al and Yahiaoui et al in considering the problem. As such, the Applicant maintains that the Examiner has failed to establish a case of *prima facie* obviousness in that the Examiner has improperly combined the teachings of Kobylivker et al and Yahiaoui et al.

In further support of this, as stated in the present application at page 4, lines 3-4, it is difficult to thermally point bond a nonwoven fabric layer to a microporous thermoplastic film since the resulting laminate frequently fails to meet blood strikethrough requirements as described in ASTM-F1670-95. The present invention has overcome this difficulty. Directing the Examiner's attention to page 4, lines 9-21 it is stated that:

The difficulty in obtaining thermal bonded laminates of nonwovens and microporous films that pass the ASTM-F1670-95 test is further increased when the nonwoven webs are treated with a fugitive surfactants. It is believed that when such webs are thermal bonded to microporous films, some portion of fugitive surfactant present on the web is driven by the heat and pressure of the thermal bonding process into the film itself at the bond areas. When liquid such as water, blood, or urine contacts this surfactant present in the microporous regions of the film the surface tension of the liquid decreases sufficiently to result in the passage of liquid through the microporous network. Such laminates fail to pass the blood strikethrough criteria set forth in ASTM-F1670-95. It is believed that the pressures and temperatures used in the thermal bonding process create intimate contact among the surfactant, the polymers of the nonwoven fabric, and the polymers and other materials present in the film at bonded regions. This is believed to result in the presence of surfactant in the microporous regions that reduces the surface tension of liquid that contacts these regions and allows the liquid to pass through the laminate.

The disclosure goes on to state that laminates of surfactant treated webs and microporous films are typically created by the use of adhesive fastening (see page 4, lines 22-25). As stated at page 4, lines 31-33:

Consequently, until the present invention, it was believed that microporous films thermally bonded to nonwoven webs with surfactant treatments could not reliably provide the liquid barrier necessary to enable the film/nonwoven laminate to pass the blood strikethrough criteria of ASTM-F1670-95.

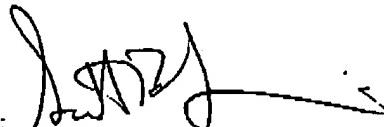
Nonetheless, the Examiner points to the use of a surfactant for providing a coating on the non-woven web (per the disclosure of Yahiaoui et al) as support for modifying the method disclosed in Kobylivker et al. The Examiner contends that this modification to Kobylivker et al would provide an improved absorbency characteristic thus allowing faster absorption of liquids. However, as stated above, the Applicant can find no motivation whatsoever to combine or modify Kobylivker et al with Yahiaoui et al. Absent some reason to the contrary, it is impermissible for the Examiner to use the present invention as a manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. Therefore for these reasons, the Applicant contends that the combination of these two patents cannot be maintained and that the rejection of claims 1-3, and 5-20 on this basis should be withdrawn. A discussion regarding the specifics of each claim and its rejection is considered unnecessary in light of the above arguments.

Claim 4 was also rejected under 35 U.S.C. §103(a) as being unpatentable over Kobylivker et al in view of Yahiaoui et al as applied to claim I above, and further in view of Haffner et al (US 6,045,900). Claim 4 was canceled so no argument is necessary.

The Applicant respectfully submits that the present claims are in condition for allowance and respectfully request an early notice of Allowance or other favorable action. Please charge any prosecution fees including a one month's extension which are due to Kimberly-Clark Corporation's Deposit Account No. 11-0875.

The Examiner is invited to telephone the undersigned at his convenience should only minor issues remain after consideration of the present amendment to permit early resolution of same.

Respectfully submitted,
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